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OFFICE OF PETITIONS

In re Patent No. 6,806,303 :
Nohara et al. :
Issue Date: October 19, 2004 : DECISION ON REQUEST
Application No. 09/923,533 : FOR RECONSIDERATION OF
Filed: August 8, 2001 : PATENT TERM ADJUSTMENT
Attorney Docket No. : and
Q65728 : NOTICE OF INTENT TO ISSUE
: CERTIFICATE OF CORRECTION
:

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT (UNDER 37 C.F.R. § 1.705(d)), " filed December 6, 2004. Patentees request that the patent term determination indicated in the Issue Notification (and in the patent) be corrected from one hundred eighty-one (181) days to two hundred fifty-three (253). For the reasons set forth herein, this petition is being treated in part as an application for patent term adjustment under § 1.705(b).

The application for patent term adjustment under § 1.705(b) is **DISMISSED AS UNTIMELY FILED**. Patentees are given **TWO (2) MONTHS** from the mail date of this decision to respond. No extensions of time will be granted under § 1.136(a).

The request for reconsideration of patent term adjustment under § 1.705(d) is **GRANTED** to the extent indicated herein.

The patent term adjustment indicated in the patent is to be corrected by issuance of a certificate of correction showing a revised Patent Term Adjustment of two hundred forty-nine **(249)** days.

On October 19, 2004, the above-identified application matured into U.S. Patent No. 6,806,303, with a patent term adjustment of 181 days. In response, patentees filed the instant request for reconsideration. Patentees agree with the Office's determination of a 253 day patent term adjustment in accordance with § 1.703(a)(1) for Office delay in mailing a first Office action under 35 U.S.C. 132. However, patentees assert that there should not have been a reduction of 4 days under § 1.704(b) for applicant delay in filing a response to the non-final Office action mailed June 18, 2003, as the federal government was closed on September 18 and 19, 2003 due to Hurricane Isabel. Further, patentees dispute the reduction of 68 days due to "Workflow-Drawings finished" as there were no drawings in the case.

On May 17, 2004, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment (PTA) to date is 249 days. This initial determination of patent term adjustment included calculation of the reduction of 4 days. PALM records indicate that the issue fee payment was received in the Office on August 4, 2004. No filing of an application for patent term adjustment preceded the payment of the issue fee. The period for filing an application for patent term adjustment requesting reconsideration of the initial determination of patent term adjustment at the time of mailing of the notice of allowance ended August 4, 2004. Accordingly, to the extent the instant application requests reconsideration of the 4 day reduction, it is appropriate to dismiss this petition as untimely filed.

As to the reduction of 68 days, a review of the PALM calculations for this application reveals that the initial determination of PTA of 253 days was reduced by 68 days for the submission of drawings after the mailing of the notice of allowance. See 37 CFR 1.704(c)(10). However, a review of the application record supports a conclusion that no drawings (or any other paper, aside from the instant petition) were filed in this application after the mailing of the notice of allowance. There were no drawings in this application.

In view thereof, it is concluded that the patent should have issued with a revised Patent Term Adjustment of two hundred forty-nine (249) days.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The application file is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction in order to rectify this error. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by TWO HUNDRED FORTY-NINE (249) days.

Telephone inquiries specific to this matter should be directed to Nancy Johnson, Senior Petitions Attorney, at (571) 272-3219.

Karin Ferriter
for

Karin Ferriter
Senior Legal Advisor
Office of Patent Legal Administration
Office of Deputy Commissioner
for Patent Examination Policy

Enclosure: Copy of DRAFT Certificate of Correction